

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

IN RE:  
CINDY CLAIBORNE

Debtor,

KONDAUR CAPITAL CORPORATION, AS  
SEPARATE TRUSTEE OF MATAWIN  
VENTURES TRUST SERIES 2013-3

Movant,

v.

CINDY CLAIBORNE, Debtor  
CARL M. BATES, Trustee,  
Respondents.

CASE No: 10-34263-KLP  
Chapter 13

**MOTION FOR RELIEF FROM STAY  
OR IN THE ALTERNATIVE ADEQUATE PROTECTION**

**NOTICE TO DEBTOR(S): Failure to file a written response to this motion with the Clerk of the United States Bankruptcy Court and to send Movant a copy within 14 days from date of certificate of service may result in entry of a default judgment.**

**Kondaur Capital Corporation, as Separate Trustee of Matawin Ventures Trust Series 2013-3 is requesting to have the 14 day stay waived and that the order be binding in the event of a conversion.**

COMES NOW your Movant, Kondaur Capital Corporation, as Separate Trustee of Matawin Ventures Trust Series 2013-3, by counsel, and files this Motion for Relief from Stay to terminate, annul, modify or condition the automatic stay pursuant to 11 U.S.C. 362(d), or if such relief cannot be had, for Adequate Protection, and in support thereof states the following:

1. This Court has proper jurisdiction over the matters herein alleged pursuant to 28 U.S.C. §1334. This matter constitutes a core proceeding within the meaning of 28 U.S.C.

§157 and a contested matter under Rules of Bankruptcy procedure 4001 and 9014.

2. That on June 16, 2010, Cindy Claiborne, (the “Debtor”) initiated proceedings in the Court seeking relief under Chapter 13 of the United States Bankruptcy Code.

3. Movant is a secured creditor of the Debtor by virtue of the fact that it holds or services a Note (the “Note”) dated January 23, 2004 in the original principal amount of \$106,301.24. A copy of the Note is attached hereto as Exhibit A.

4. Said Note is secured by a Deed of Trust (the “Deed of Trust”), on property owned by the debtors located at 3217 Fielding Road, Colonial Heights, Virginia, 23834, more specifically described as:

ALL THAT PARCEL OF LAND IN CITY OF CHESTERFIELD,  
CHESTERFIELD COUNTY, COMMONWEALTH OF VIRGINIA, AS MORE  
FULLY DESCRIBED IN DEED BOOK 1881, PAGE 263, ID# 796639036300000,  
BEING KNOWN AND DESIGNATED AS LOT 15, BLOCK E, SECTION 3,  
HAPPY HILL FARMS, FILED IN PLAT BOOK 52, PAGE 71, RECORDED  
08/31/1984.

BY FEE SIMPLE DEED FROM GERALD D. SHEPPERSON AND SYLVIA A.  
SHEPPERSON AS SET FORTH IN BOOK 1881 PAGE 263 DATED 06/29/1987  
AND RECORDED 07/08/1987, CHESTERFIELD COUNTY RECORDS,  
COMMONWEALTH OF VIRGINIA.

A copy of the Deed of Trust is attached hereto as Exhibit B.

5. All rights and remedies under the Deed of Trust have been assigned to the Movant pursuant to that certain assignment of deed of trust (the “Assignment”). A copy of the recorded Assignment is attached hereto as Exhibit C.

6. Kondaur Capital Corporation services the loan on the property referenced in this Motion for Relief. In the even the automatic stay in this case is modified, this case dismisses, and/or the Debtor obtains a discharge and a foreclosure action is commenced on the mortgaged property, the foreclosure will be conducted in the name of Kondaur

Capital Corporation (the "Noteholder"). In addition to foreclosure, this Relief Order permits activity necessary to obtain possession of said collateral. Therefore, Kondaur is permitted to engage in loss mitigation activity, including short payoff, short sale, and the obtaining of a deed in lieu of foreclosure, including authorization to negotiate inferior liens. Kondaur is further permitted to send information regarding these loss mitigation options directly to the debtor.

7. Noteholder directly or through an agent, has possession of the promissory note. The promissory note is either made payable to the Noteholder or has been duly endorsed. Noteholder is the original mortgagee or beneficiary or the assignee of the security instrument for the referenced loan.

8. The Debtors have failed to make post-petition payments due under the Note and is post-petition due for (a) the April 1, 2014 through July 1, 2014 post-petition payments in the amount of \$717.96 per month; (b) plus attorney fees and Court costs of \$650.00 and \$176.00, respectively.

9. There is no equity in the aforesaid property for the benefit of the Debtor or Debtor's estate when costs of sale and tax consequences are included, to-wit:

- a. Pursuant to the Debtor's Schedule A the current value of the property is \$148,300.00;
- b. The payoff for Movant's Note is approximately \$94,693.23, excluding the costs of the current proceeding.
- c. Upon information and belief, the aggregate amount of encumbrances on the Property listed in the Schedules or otherwise known, including but not limited to the encumbrances granted to Movant, is \$129,693.23.

10. The arrearages aforementioned are increasing on a daily basis, to the detriment of Movant's interests.

11. The failure to make payments is a material default, and constitutes cause for relief from stay.

12. Movant has not been offered adequate protection for its interests, nor is Debtor presently able to provide adequate protection to the Movant.

13. The aforesaid property is not necessary for an effective reorganization.

14. Movant is being injured by its inability to proceed against the property securing the indebtedness due to the automatic stay provided for in 11 U.S.C. §362.

15. Cause exists to terminate the Automatic Stay. Or, in the alternative, cause exists for an order granting Movant adequate protection payments to insure against continued post-petition defaults.

WHEREFORE, these premises considered, Movant moves this Court Movant further requests that upon entry of an order granting relief from stay, it be exempted from further compliance with Fed. Rule Bankr. P. 3002.1 in the instant bankruptcy case to grant it full relief from the automatic stay provisions of 11 U.S.C. §362, or, if full relief cannot be had, adequate protection, or to grant such other relief as may seem proper to the Court.

Kondaur Capital Corporation, as Separate  
Trustee of Matawin Ventures Trust Series  
2013-3  
By Counsel

MORRIS | HARDWICK | SCHNEIDER, PLLC

By: /s/ James M. Collins, Esq.  
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Counsel for Movant File No.: VA-96000283-14

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the foregoing Motion was transmitted to all parties listed on the ECF system or mailed first-class, postage prepaid this 3rd day of July, 2014 to:

Cindy Claiborne  
3217 Fielding Rd  
Colonial Heights, VA 23834  
Debtor

Richard James Oulton, Esq.  
2312 Boulevard  
Colonial Heights, VA 23834  
Attorney for Debtor

Carl M. Bates, Trustee  
P. O. Box 1819  
Richmond, VA 23218  
Chapter 13 Trustee

/s/ James M. Collins, Esq.  
James M. Collins, Esq.